POLICY NOTE

THE DISABILITY ASSISTANCE FOR WORKING AGE PEOPLE (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENT AND TRANSITIONAL PROVISION) (SCOTLAND) REGULATIONS 2022

SSI 2022/31

The above instrument was made in exercise of the powers conferred by section 95 of the Social Security (Scotland) Act 2018. The instrument is subject to the negative procedure.

The purpose of this instrument is to make consequential amendments and transitional provision as a result of the introduction of a new form of disability assistance, Adult Disability Payment. Adult Disability Payment was introduced by the Disability Assistance for Working Age People (Scotland) Regulations 2022, which were made by Scottish Ministers in exercise of the powers conferred by the Social Security (Scotland) Act 2018. ADP will replace Personal Independence Payment in Scotland. These provisions are required to ensure that certain Scottish Statutory Instruments apply to individuals in receipt of Adult Disability Payment in the same way they apply to individuals who receive Personal Independence Payment. This ensures that individuals who are entitled to Adult Disability Payment will benefit from the same exemptions, concessions and reliefs, in devolved areas, as individuals currently in receipt of Personal Independence Payment.

Policy Objectives

1. The main purpose of this instrument is to make consequential amendments to reflect the transition from Personal Independence Payment to the new Adult Disability Payment, so as to allow disability related passported benefits to be accessible in Scotland through Adult Disability Payment in the same way as they are for people currently claiming Personal Independence Payment.

2. Individuals aged between 16 and state pension age (subject to some exceptions) are eligible to apply for Adult Disability Payment.

3. Adult Disability Payment will be delivered by Social Security Scotland from 21 March 2022 with an initial application period comprising of three phases for new applications in specified local authority areas .These 3 phases will commence on 21 March 2022, 20 June 2022 and 25 July 2022 respectively. Social Security Scotland will then accept new applications from individuals in all other Scottish local authority areas from 29 August 2022.

4. Legislation will be introduced before the UK Parliament to enable the necessary legal changes to be made to reserved exemptions, concessions and reliefs for those in receipt of Adult Disability Payment. For areas within the competence of the Scottish Parliament, these Regulations make the necessary changes to Scots law to fulfil the Scottish Government's commitment to a safe and secure transition. For Adult Disability Payment, this means ensuring that people continue to receive access to the same payments and passporting benefits as they would if they were receiving Personal Independence Payment.

5. Because social security interacts with a number of devolved areas, the following allowances, disregards or premiums are within the scope of these regulations:

- Absent voting at Scottish Parliamentary and local elections;
- Entitlement to Advice and Assistance (under the Legal Aid (Scotland) Act 1986);
- Children's Legal Assistance;
- Civil Legal Aid;
- Council tax reduction (for both adult and pension age people);
- Council tax exemption and council tax discount;
- Disabled Person's Parking Badge (blue badge);
- National concessionary travel scheme (bus passes);
- NHS travelling expenses and fees;
- Entitlement to Child Winter Heating Assistance;
- Entitlement to apply for government grants to improve home energy efficiency;
- Repayment of student loans; and
- National Assistance (Assessment of Resources)

6. These regulations provide that where certain Scottish regulations refer to Personal Independence Payment, there is a corresponding reference to Adult Disability Payment or short-term assistance. Short-term assistance is assistance that an individual can elect to receive if they are appealing to Social Security Scotland, or to the Social Security Chamber First-tier Tribunal for Scotland, against a decision to stop or reduce their entitlement to assistance under Part 2 of the Social Security (Scotland) Act 2018. Short-term assistance is not available for first-time applicants and is unique to the Scottish social security system. Because short-term assistance can be paid in respect of more than one form of devolved assistance, the provision makes clear that the scope of the amendments extends only to circumstances where short-term assistance is paid as a result of a qualifying Adult Disability Payment award being stopped or reduced. This fulfils a further policy objective by ensuring that individuals in receipt of short-term assistance benefit from the same income disregards and entitlements as they would have but for their Adult Disability Payment award being stopped or reduced.

7. An additional amendment is also included to make provision within the Civil Legal Aid Regulations (Scotland) 2002 for individuals receiving Child Disability Payment, or short-term assistance paid as a result of a qualifying Child Disability Payment award being stopped or reduced.

8. The regulations also make transitional provision to remove the rights of individuals who are between the age of 16 and pensionable age in Scotland from applying for Personal Independence Payment. The transitional provision also ensures that the option of applying for Personal Independence Payment remains open to individuals in Scotland who are of working age and receiving Disability Living Allowance during the Adult Disability Payment pilot.

9. Finally, they make provision to amend The Disability Assistance for Children and Young People (Scotland) Regulations 2021 to include reference to Adult Disability Payment, and prevent individuals from being entitled to short-term assistance through Child Disability Payment when:

- They no longer meet the age criteria for Child Disability Payment

- Their Child Disability Payment claim is ended because they are in receipt of Adult Disability Payment.

Consultation

10. The Scottish Government's Consultation on Social Security in Scotland (2016) sought views from stakeholders and the public on the high-level principles for devolved social security, which went on to inform the 2018 Act. The consultation ran from 29 July to 30 October 2016[1].

11. There were 481 responses to the consultation and the majority were broadly supportive of the proposals set out in the accompanying consultation paper. Stakeholders' primary focus was the need to take a safe and secure approach to devolving the provision of social security, ensuring that people would continue to receive the benefits they are entitled to without any disruption.

12. The Scottish Government consulted on the key eligibility criteria and the format of the devolved disability benefits in the Consultation on Disability Assistance[2] which ran from 5 March to 28 May 2019. The consultation received 263 responses, which were broadly supportive of the proposal set out in the accompanying consultation paper.

13. Between 21 December 2020 and 15 March 2021, the Scottish Government undertook a public consultation on its proposals for the delivery of Adult Disability Payment. The consultation received 127 responses from individuals and stakeholder organisations. One theme which came across in a number of responses was the importance of clients maintaining automatic access to the benefits and entitlements that they receive due to being in receipt of Personal Independence Payment. The Scottish Government published a response to the public consultation on 25 June 2021, reaffirming a commitment to this continuity of access to both reserved and devolved entitlements.

Impact Assessments

14. A Business and Regulatory Impact Assessment has been completed and is provided with this instrument. The Scottish Government does not believe that these consequential amendments will have an adverse impact on the competitiveness of Scottish companies or the third sector within Scotland, the UK, or elsewhere in Europe or the rest of the world. Similarly, the Scottish Government does not believe there will be any adverse impact on the operational business of local authorities as a result of introducing these regulations as they serve to ensure that recipients of Adult Disability Payment can access the same passported benefits as PIP recipients. Therefore, these Regulations do not seek to substantively change the nature of the policy areas that the Regulations interact with.

[1] https://consult.gov.scot/social-security/social-security-in-scotland
[2] https://consult.gov.scot/social-security/improving-disability-assistance

Financial Effects

15. A Business and Regulatory Impact Assessment has been completed. The impact of this policy on business is limited and no quantifiable financial effects have been identified.

Scottish Government
Social Security Directorate

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